

FIRST REGULAR SESSION

HOUSE BILL NO. 868

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BAHR.

1509H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapters 135 and 166, RSMo, by adding thereto eleven new sections relating to educational scholarships, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapters 135 and 166, RSMo, are amended by adding thereto eleven new sections, to be known as sections 135.712, 135.713, 135.714, 135.716, 135.719, 166.700, 166.705, 166.710, 166.715, 166.720, and 166.725, to read as follows:

135.712. 1. Sections 135.712 to 135.719 and sections 166.700 to 166.725 establish the "Missouri Empowerment Scholarship Accounts Program" to provide options toward ensuring the education of students in this state.

2. As used in sections 135.712 to 135.719, the following terms shall mean:

(1) "District" or "school district", the same meaning given to the term in section 160.011;

(2) "Educational assistance organization", a charitable organization registered in this state that is exempt from federal taxation under the Internal Revenue Code of 1986, as amended, that is certified by the state treasurer, and that allocates all of its annual revenue for educational assistance, except as provided in paragraph (c) of subdivision (4) of subsection 1 of section 135.714 and as provided for in sections 135.712 to 135.719, derived from contributions for which a credit is claimed under sections 135.712 to 135.719;

(3) "Office", office of the state treasurer;

(4) "Parent", a parent, guardian, custodian, or other person with authority to act on behalf of the qualified student;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (5) "Program", the Missouri empowerment scholarship accounts program
17 established under sections 135.712 to 135.719 and sections 166.700 to 166.725;

18 (6) "Qualified student", the same meaning given to the term in section 166.700;

19 (7) "Qualifying contribution", a donation of cash, stock, bonds, or other
20 marketable securities for purposes of claiming a tax credit under sections 135.712 to
21 135.719;

22 (8) "Scholarship account", a consumer-directed account created by the Missouri
23 empowerment scholarship accounts program authorized by sections 166.700 to 166.725;

24 (9) "Taxpayer", an individual subject to the state income tax imposed in chapter
25 143; an individual, firm, partner in a firm, corporation, or shareholder in an S corporation
26 doing business in this state and subject to the state income tax imposed by chapter 143; or
27 an express company that pays an annual tax on its gross receipts in this state under chapter
28 153, which files a Missouri income tax return and is not a dependent of any other taxpayer.

135.713. 1. For all tax years beginning on or after January 1, 2017, any taxpayer
2 who makes a qualifying contribution to an educational assistance organization may claim
3 a credit against the tax otherwise due under chapter 143, other than taxes withheld under
4 sections 143.191 to 143.265, and chapter 153, in an amount equal to one hundred percent
5 of the amount the taxpayer contributed during the tax year for which the credit is claimed.
6 No taxpayer shall claim a credit under sections 135.712 to 135.719 for any contribution
7 made by the taxpayer, or an agent of the taxpayer, on behalf of the taxpayer's dependent
8 or, in the case of a business taxpayer, on behalf of the business's agent's dependent.

9 2. If the amount of the tax credit claimed exceeds the taxpayer's state tax liability
10 for the tax year for which the credit is claimed, then the excess of the tax credit shall be
11 considered an overpayment of the tax and be refunded to the taxpayer. The office shall
12 certify the tax credit amount to the taxpayer and to the department of revenue. All tax
13 credits authorized under the program may be transferred, sold, or assigned.

14 3. The cumulative amount of tax credits that may be allocated to all taxpayers
15 contributing to educational assistance organizations in any one calendar year shall not
16 exceed twenty-five million dollars. However, in any calendar year when the annual tax
17 credit amount for the prior calendar year is equal to or greater than ninety percent of the
18 tax credit limitation amount applicable to that calendar year, the tax credit limitation shall
19 increase by twenty percent. The state treasurer shall establish a procedure by which, from
20 the beginning of the calendar year until some point in time later in the calendar year to be
21 determined by the state treasurer, the cumulative amount of tax credits shall be allocated
22 on a first-come, first-served basis among all educational assistance organizations. If an
23 educational assistance organization fails to use all, or some percentage to be determined

24 by the state treasurer, of its apportioned tax credits during this predetermined period of
25 time, the state treasurer may reapportion these unused tax credits to those educational
26 assistance organizations that have used all, or some percentage to be determined by the
27 state treasurer, of their apportioned tax credits during this predetermined period of time.
28 The state treasurer may establish more than one period of time and reapportion more than
29 once during each calendar year. To the maximum extent possible, the state treasurer shall
30 establish the procedure described in this subsection in such a manner as to ensure that
31 taxpayers can claim all the tax credits possible up to the cumulative amount of tax credits
32 available for the calendar year.

33 4. The state treasurer may contract with a private financial management firm to
34 manage scholarship account funds with supervision of the state.

135.714. 1. Each educational assistance organization shall:

2 (1) Notify the office of its intent to provide scholarship accounts to qualified
3 students;

4 (2) Demonstrate to the office that it is exempt from federal income tax under
5 Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

6 (3) Provide an office-approved receipt to taxpayers for contributions made to the
7 organization;

8 (4) Ensure that:

9 (a) One hundred percent of its revenues from interest or investments is spent on
10 scholarship accounts;

11 (b) At least ninety percent of its revenues from qualifying contributions is spent on
12 scholarship accounts; and

13 (c) Marketing and administrative expenses do not exceed the following limits of its
14 remaining revenue from contributions: ten percent for the first two hundred fifty thousand
15 dollars, eight percent for the next five hundred thousand dollars, and three percent
16 thereafter;

17 (5) Distribute scholarship account payments four times per year, not to exceed a
18 total grant amount equal to the state adequacy target, as defined in section 163.011, and
19 calculated by the department of elementary and secondary education, in the form of a
20 deposit into the scholarship account of the qualified student;

21 (6) Provide the office, upon request, with criminal background checks on all its
22 employees and board members and exclude from employment or governance any
23 individual that might reasonably pose a risk to the appropriate use of contributed funds;

24 (7) Demonstrate its financial accountability by:

25 (a) Submitting to the office a financial information report for the organization that
26 complies with uniform financial accounting standards established by the office and is
27 conducted by a certified public accountant; and

28 (b) Having an auditor certify that the report is free of material misstatements; and

29 (8) Demonstrate its financial viability, if it is to receive donations of fifty thousand
30 dollars or more during the school year, by filing with the office before the start of the
31 school year a surety bond payable to the state in an amount equal to the aggregate amount
32 of contributions expected to be received during the school year or other financial
33 information that demonstrates the financial viability of the educational assistance
34 organization.

35 2. An educational assistance organization shall publicly report to the office by June
36 first of each year the following information prepared by a certified public accountant
37 regarding its grants in the previous calendar year:

38 (1) The name and address of the educational assistance organization;

39 (2) The name and address of each qualified student who opened a scholarship
40 account with the organization;

41 (3) The total number and total dollar amount of contributions received during the
42 previous calendar year; and

43 (4) The total number and total dollar amount of scholarship accounts opened
44 during the previous calendar year.

45 3. An educational assistance organization may contract with private financial
46 management firms to manage scholarship accounts with the supervision of the state.

135.716. 1. The office shall provide a standardized format for a receipt to be issued
2 by an educational assistance organization to a taxpayer to indicate the value of a
3 contribution received. The office shall require a taxpayer to provide a copy of this receipt
4 if claiming the tax credit authorized by the program.

5 2. Educational assistance organizations shall use the standardized format described
6 under subsection 1 of this section to issue receipts to taxpayers.

7 3. The office may conduct either a financial review or an audit of an educational
8 assistance organization if the office possesses evidence of fraud committed by the
9 organization.

10 4. The office may bar an educational assistance organization from participating in
11 the program if the office establishes that the educational assistance organization has
12 intentionally and substantially failed to comply with the requirements in section 135.714.
13 If the office bars an educational assistance organization from the program under this

14 subsection, it shall notify affected qualified students and their parents of the decision as
15 soon as possible after the determination is made.

16 **5. The office shall receive no more than two percent of the qualifying contributions**
17 **for marketing and administrative expenses or the costs incurred in administering the**
18 **program, whichever is less. The state treasurer shall establish procedures to ensure the**
19 **percentage of funds for administration of the program is directed to the office in a timely**
20 **manner with the necessary information to verify the correct amount has been transmitted.**
21 **The remaining funds shall be distributed to the educational assistance organizations.**

135.719. 1. The office and the department of revenue may promulgate rules to
2 **implement the provisions of sections 135.712 to 135.719. Any rule or portion of a rule, as**
3 **that term is defined in section 536.010, that is created under the authority delegated in this**
4 **section shall become effective only if it complies with and is subject to all of the provisions**
5 **of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are**
6 **nonseverable, and if any of the powers vested with the general assembly pursuant to**
7 **chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are**
8 **subsequently held unconstitutional, then the grant of rulemaking authority and any rule**
9 **proposed or adopted after August 28, 2017, shall be invalid and void.**

10 **2. The provisions of section 23.253 of the Missouri sunset act shall not apply to**
11 **sections 135.712 to 135.719 and sections 166.700 to 166.725.**

166.700. As used in sections 166.700 to 166.725, the following terms shall mean:

2 **(1) "Curriculum", a complete course of study for a particular content area or grade**
3 **level, including any supplemental materials;**

4 **(2) "Educational assistance organization", the same meaning given to the term in**
5 **section 135.712;**

6 **(3) "Eligible postsecondary institution", any approved private institution or**
7 **approved public institution as defined in section 173.1102;**

8 **(4) "Office", the same meaning given to the term in section 135.712;**

9 **(5) "Parent", the same meaning given to the term in section 135.712;**

10 **(6) "Private school", a school that is not a part of the public school system of the**
11 **state of Missouri and that charges tuition or fees for the rendering of elementary or**
12 **secondary educational services;**

13 **(7) "Program", the Missouri empowerment scholarship accounts program**
14 **established under sections 135.712 to 135.719 and sections 166.700 to 166.725;**

15 **(8) "Qualified school", a home school as defined in section 167.031, a private school**
16 **as defined in this section, a public school as defined in section 160.011, or any public or**

17 private virtual school, that is located in Missouri and complies with the nondiscrimination
18 policies set forth in 42 U.S.C. Section 1981;

19 (9) "Qualified student", any elementary or secondary school student who is a
20 resident of this state who:

21 (a) Was enrolled in a public school at least one semester from the previous twelve
22 months and who transferred from a public school under a contract to participate in the
23 program;

24 (b) Previously participated in the program;

25 (c) Is a child who is eligible to begin kindergarten or first grade under sections
26 160.051 to 160.055; or

27 (d) Is attending school for the first time.

166.705. 1. A parent of a qualified student may establish a Missouri empowerment
2 scholarship account for the student by entering into a written agreement with an
3 educational assistance organization. The agreement shall provide that:

4 (1) The qualified student shall enroll in a qualified school and receive an education
5 in at least the subjects of reading, grammar, mathematics, social studies, and science;

6 (2) The qualified student shall release the district of residence from all obligations
7 to educate the qualified student while the qualified student is enrolled in the program if the
8 qualified student enrolls in a qualified school located outside of the qualified student's
9 district of residence, and acceptance of a scholarship account shall have the same effect as
10 a parental placement under 20 U.S.C. Section 1412(a)(10)(A) of the Individuals with
11 Disabilities Education Act; except that, this subdivision shall not relieve the student's
12 district of residence from the obligation to conduct an evaluation for disabilities;

13 (3) The qualified student shall receive a grant, in the form of moneys deposited
14 under section 135.714, in the qualified student's Missouri empowerment scholarship
15 account; and

16 (4) The moneys deposited in the qualified student's Missouri empowerment
17 scholarship account shall be used only for the following expenses of the qualified student:

18 (a) Tuition or fees at a qualified school;

19 (b) Textbooks required by a qualified school;

20 (c) Educational therapies or services for the qualified student from a licensed or
21 accredited practitioner or provider, including licensed or accredited paraprofessionals or
22 educational aides;

23 (d) Tutoring services provided by a tutor or others subject to review by the office;

24 (e) Curriculum;

25 (f) Computer hardware or other technological devices that are used to help meet
26 a qualified student's educational needs and that are approved by an educational assistance
27 organization;

28 (g) Tuition or fees for a nonpublic online learning program;

29 (h) Tuition or fees for any public or private virtual school;

30 (i) Fees for summer education programs and specialized after-school education
31 programs;

32 (j) Fees for a nationally standardized norm-referenced achievement test, advanced
33 placement examinations, international baccalaureate examinations, or any examinations
34 related to college or university admission;

35 (k) Contracted services provided by a public school district including, without
36 limitation, extracurricular programs and individual classes;

37 (l) Fees for management of the empowerment scholarship account by firms selected
38 by the educational assistance organization;

39 (m) Insurance or surety bond payments as required by the office;

40 (n) Fees for obtaining a state-recognized industry certification;

41 (o) Tuition for courses at an eligible postsecondary institution while the qualified
42 student is enrolled at a qualified school; and

43 (p) Transportation costs incurred for the distance necessarily traveled in going to
44 and returning from a qualified school or other allowable therapy or service as stated in this
45 section. Mileage shall be reimbursed at the rate prescribed by the Missouri office of
46 administration for allowable expenses for motor vehicle use expressed as an amount per
47 mile.

48 2. Missouri empowerment scholarship accounts are renewable on an annual basis
49 upon request of the parent of a qualified student. A student who has previously qualified
50 for a Missouri empowerment scholarship account shall remain eligible to apply for renewal
51 until the student completes high school and submits scores from a nationally standardized
52 norm-referenced achievement test, advanced placement examination, international
53 baccalaureate examination, or any examination related to college or university admission,
54 purchased with Missouri empowerment scholarship account funds, to the office.

55 3. A signed agreement under this section shall satisfy the compulsory school
56 attendance requirements of section 167.031.

57 4. A qualified school or a provider of services purchased under this section shall
58 not share, refund, or rebate any Missouri empowerment scholarship account moneys with
59 the parent or qualified student in any manner.

60 **5. If a qualified student withdraws from the program by enrolling in a school other**
61 **than a qualified school, or is disqualified from the program under the provisions of section**
62 **166.715, the qualified student's Missouri empowerment scholarship account shall be closed**
63 **and any remaining funds shall be returned to the educational assistance organization for**
64 **redistribution to other qualified students. Under such circumstances, the obligation to**
65 **provide an education for such student shall transfer back to the student's district of**
66 **residence.**

67 **6. Any funds remaining in a qualified student's scholarship account at the end of**
68 **a school year shall remain in the account and shall not be returned to the educational**
69 **assistance organization. Any funds remaining in a qualified student's scholarship account**
70 **upon graduation from a qualified high school shall be returned to the educational**
71 **assistance organization for redistribution to other qualified students.**

72 **7. Moneys received under sections 166.700 to 166.725 shall not constitute Missouri**
73 **taxable income to the parent of the qualified student.**

166.710. 1. The parent of a qualified student in grades kindergarten through
2 **twelve who has a scholarship account shall annually have the qualified student take a**
3 **nationally standardized norm-referenced achievement test, an advanced placement**
4 **examination, or any examination related to college or university admissions that assesses**
5 **reading and mathematics. The office shall make available to qualified students with**
6 **scholarship accounts a list of achievement tests that satisfy the requirement of this**
7 **subsection. Private schools may administer to qualified students standardized tests in**
8 **addition to the tests specified in this subsection.**

9 **2. Beginning in the 2017-18 school year and continuing each year thereafter, the**
10 **office shall contract with an independent research organization to which parents of**
11 **qualified students with scholarship accounts shall report the scores of participating**
12 **qualified students on the nationally norm-referenced tests or other assessments**
13 **administered at a qualified school. The independent research organization selected by the**
14 **office shall demonstrate documented experience in education research and evaluation and**
15 **may be a public or private entity or a university. The office and the independent research**
16 **organization may accept grants of moneys from any public or private source in order to**
17 **carry out the requirements of this subsection.**

18 **3. Beginning in the 2017-18 school year, the independent research organization**
19 **selected by the office under subsection 2 of this section shall publish an annual report that**
20 **summarizes the achievement and year-to-year learning data for qualified students with**
21 **scholarship accounts. The annual report shall include, to the extent possible, a comparison**
22 **of learning gains of qualified students with scholarship accounts to the statewide learning**

23 gains of public school students with comparable socioeconomic backgrounds. In order to
24 minimize costs and reduce time required for the independent research organization's
25 analysis and evaluation, the office shall conduct analyses of matched students from public
26 school assessment data and calculate control group learning gains using a methodology
27 outlined in the contract with the independent research organization. The annual report
28 shall include a summary of parent and student satisfaction with the scholarship accounts,
29 the overall impact of the program on public school students and the school districts and
30 schools from which the participating qualified students transferred, and the impact of the
31 program on public and private school capacity, availability, and quality of service.

32 4. The independent research organization selected under subsection 2 of this section
33 shall apply appropriate analytical and behavioral science methodologies to ensure public
34 confidence in the information submitted in the annual report described in subsection 3 of
35 this section. The school districts from which the participating qualified students
36 transferred shall participate in and cooperate with the independent research organization.

37 5. The sharing and reporting of student learning data under this section shall be
38 in accordance with requirements of the Family Educational Rights and Privacy Act, 20
39 U.S.C. Section 1232g, and shall be for the sole purpose of creating the annual report
40 described in subsection 3 of this section.

41 6. The office shall annually report on its website the graduation rates of qualified
42 students who are enrolled in the program. Qualified students with individualized
43 education programs shall not be included in the testing requirements or graduation rates
44 described in this section unless a student's disability is determined by his or her treating
45 physician, therapist, or other health care professional not to significantly interfere with the
46 student's ability to take tests.

166.715. 1. The office shall conduct or contract for annual audits of empowerment
2 scholarship accounts to ensure compliance with the requirements of subsection 1 of section
3 166.705. The office shall also conduct or contract for random, quarterly, and annual
4 audits of empowerment scholarship accounts as needed to ensure compliance with the
5 requirements of subsection 1 of section 166.705.

6 2. A parent, qualified student, or vendor may be disqualified from program
7 participation if the state treasurer, or his or her designee, finds the party has committed
8 an intentional program violation consisting of any misrepresentation or other act that
9 materially violates any law or rule governing the program. The office may remove any
10 parent or qualified student from eligibility for a Missouri empowerment scholarship
11 program account. A parent may appeal the state treasurer's decision to the administrative

12 hearing commission. A parent may appeal the administrative hearing commission's
13 decision to the circuit court of the county in which the student resides.

14 3. The office shall promulgate rules to implement and administer the program
15 including, but not limited to:

- 16 (1) Rules for conducting examinations of use of account funds;
- 17 (2) Rules for conducting random, quarterly, and annual reviews of accounts;
- 18 (3) Creating an online anonymous fraud reporting service;
- 19 (4) Creating an anonymous telephone hotline for fraud reporting; and
- 20 (5) A surety bond requirement for account holders.

21 4. Any rule or portion of a rule, as that term is defined in section 536.010, that is
22 created under the authority delegated in this section shall become effective only if it
23 complies with and is subject to all of the provisions of chapter 536 and, if applicable,
24 section 536.028. This section and chapter 536 are nonseverable, and if any of the powers
25 vested with the general assembly pursuant to chapter 536 to review, to delay the effective
26 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
27 grant of rulemaking authority and any rule proposed or adopted after August 28, 2017,
28 shall be invalid and void.

166.720. 1. A person commits a class C misdemeanor if he or she is found to have
2 knowingly used moneys granted under section 135.714 for purposes other than those
3 provided for in sections 166.700 to 166.725.

4 2. No financial institution shall be liable in any civil action for providing a
5 scholarship account's financial information to the office unless the information provided
6 is false and the financial institution providing the false information does so knowingly and
7 with malice.

166.725. 1. Sections 166.700 to 166.725 do not permit any governmental agency to
2 exercise control or supervision over any qualified school in which a qualified student
3 enrolls.

4 2. A qualified school that accepts a payment from a parent under sections 166.700
5 to 166.725 shall not be an agent of the state or federal government.

6 3. A qualified school shall not be required to alter its creed, practices, admissions
7 policy, or curriculum in order to accept students whose parents pay tuition or fees from
8 empowerment scholarship accounts to participate as a qualified school.

9 4. In any legal proceeding challenging the application of sections 166.700 to 166.725
10 to a qualified school, the state shall bear the burden of establishing that the law is
11 necessary and does not impose any undue burden on qualified schools.

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